HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1473 of 2005

Between:

G.V.G.H.R. Sharma … Appellant

And

The Principal Secretary to Government,
Education Department, Secretariat,
Hyderabad and five others. …
Respondents

:: J U D G M E N T ::

Counsel for the appellant : Sri Y. Vivekananda

Counsel for respondent Nos.1 to 4 : Government Pleader for School Education.

Counsel for respondent No.5 : None

Counsel for respondent No.6 : None

11th September, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 20-6-2005 passed by the learned Single Judge in Writ Petition No.24538 of 1998, whereby he declined to quash proceedings Rc.No.3320/D-1/93, dated 19-8-1998 issued by Director of School Education, Hyderabad (respondent No.2 herein) in the matter of appointment of B.Ed. Assistants in K.P.D.T. School, Ashok Nagar, Eluru, West Godavari District (for short, 'the school').

The appellant joined service in the school as Record Assistant

on
1-7-1983. While in service, he was permitted to prosecute B.Ed. course in 1989-90. After successful completion of the course, he made an application to the Correspondent of the school on 8-2-1991 for appointment as B.Ed. Assistant by promotion in accordance with the policy contained in G.O.Ms.No.167, Education (B) Department, dated 9-3-1984. The Correspondent of the school promoted the appellant as Secondary Grade Teacher vide proceedings dated 28-8-1991 subject to the approval of District Educational Officer, West Godavari District, Eluru (respondent No.4 herein).

Respondent No.6 – K.S.R. Murthy, who possessed the qualification of M.A., B.Ed. and was employed in the services of the school, was promoted as Secondary Grade Teacher on 2-1-1991. After eight months, the Correspondent of the school issued order dated 28-8-1991 whereby he promoted respondent No.6 as B.Ed. Assistant with effect from
1-2-1991. The appellant represented against the promotion of respondent No.6. By an order dated 8-11-1991, respondent No.4 directed the Correspondent of the school to revert respondent No.6 to the post of Secondary Grade Teacher and promote the appellant as B.Ed. Assistant. That order was challenged by respondent No.6 before the Regional Joint Director of School Education (respondent No.3 herein). The latter, vide his proceedings dated 27-2-1997, set aside the order of respondent No.4 and directed the management of the school to fill up the post of B.Ed. Assistant in accordance with rules.

Respondent No.6 not only appealed against the aforesaid order, but also filed Writ Petition No.19451 of 1997 for issue of a direction to the non-petitioners to pay his salary. By an interim order, the learned Single Judge directed respondent No.2 to pass appropriate order for payment of salary to respondent No.6. In turn, respondent No.2 issued instructions to respondent No.4 to take necessary action in the matter.

The appellant challenged order dated 27-2-1997 in Writ Petition No.6634 of 1997. He also applied for stay of that order. By an interim order dated 31-3-1997 passed in WPMP.No.7908 of 1997, the learned Single Judge stayed the operation of order dated 27-2-1997. The writ petitions were finally disposed of on 16-10-1997 and the appellant and respondent No.6 were directed to avail the remedy of appeal against order dated 27-2-1997. Simultaneously, the official respondents were directed to maintain the status quo.

In compliance of the direction given by this Court, respondent No.2 entertained the appeals preferred against order dated 27-2-1997, gave opportunity of personal hearing to the appellant and respondent No.6 and then passed order dated 19-8-1998 whereby he directed that respondent No.6 should be considered for the post of School Assistant by pushing down the appellant to the post of SGBT. The appellant challenged that order in Writ Petition No.24538 of 1998, but could not convince the learned Single Judge to accept his prayer for issue of a direction to the management of the school to promote him as B.Ed. Assistant.

Sri Y. Vivekananda relied on G.O.Ms.No.167, dated 9-3-1984 and argued that the appellant is entitled to be promoted as B.Ed. Assistant as of right and the learned Single Judge committed a serious error by refusing to entertain his claim. He emphasised that the rules regulating recruitment to the post of B.Ed. Assistant in the private aided schools do not confine the zone of eligibility to the persons holding the post of S.G.B.T. and argued that all persons holding the post of Record Assistant and equivalent posts are eligible to be considered for promotion to the post of B.Ed. Assistant. Sri Vivekananda further argued that even if the appellant is not treated eligible to be appointed as B.Ed. Assistant by promotion, he is entitled to be appointed on that post by transfer in terms of paragraph 3 of column 4 of the Annexure appended to G.O.Ms.No.167, dated 9-3-1984. Learned counsel then referred to the Andhra Pradesh Educational Institutions

(Establishment, Recognition, Administration and Control of Schools) Rules, 1988 (for short, 'the Rules') and argued that the appellant is entitled to be promoted as B.Ed. Assistant in accordance with the provision contained in Rule 15 read with the instructions contained in G.O.Ms.No.167, dated 9-3-1984. He lastly submitted that the instructions issued by respondent No.2 against the consideration of persons holding non-teaching posts for promotion to teaching posts will be deemed to have been superceded by Government Memo No.731/SS.2/92-4, dated 3-10-1992 and, therefore, the appellant cannot be denied consideration for promotion as B.Ed. Assistant on the premise that he was holding non-teaching post.

The learned Government Pleader for School Education supported the order under challenge and argued that the appellant cannot be treated eligible to be appointed as B.Ed. Assistant by promotion because he was not holding any of the feeder posts specified in the Annexure appended to G.O.Ms.No.167, dated 9-3-1984. He then argued that the appellant cannot be appointed as B.Ed. Assistant by transfer because he is a member of the same service.

We have considered the respective submissions. A reading of order dated 19-8-1998 passed by respondent No.2 shows that the appellant's claim for promotion as B.Ed. Assistant was rejected by respondent No.2 on the premise that in view of executive instructions issued vide Circular dated 13-12-1989, a person appointed to non-teaching post cannot be promoted to a teaching post. Another reason assigned by respondent No.2 was that a person holding the post of Record Assistant cannot be directly promoted to the post of School Assistant.

In our opinion, even though the first reason assigned by respondent No.2 does not appear to be legally sound inasmuch as the State Government had vide Memo dated 3-10-1992 made it clear that if qualified persons in the feeder categories in the teaching staff are not available, then those working on the non-teaching posts can be

considered for promotion to the teaching category, but the second reason assigned by him i.e. respondent No.2 is legally correct and the learned Single Judge did not commit any error by refusing to entertain the appellant's claim for appointment by promotion.

G.O.Ms.No.167, dated 9-3-1984 on which reliance has been placed by the learned counsel for the appellant reads as under:

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Secondary Education – Re-grouped Scales of Pya – Promotion channels etc. – Orders - Issued.

EDUCATION (B) DEPARTMENT

G.O.Ms.No.167, dt.9-3-84

Read the following:-

1. G.O.Ms.No.883, Edn., dt.5-12-82.
2. G.O.Ms.No.1000 (S) Edn., dt.17-12-82.
3. From the Commissioner of School Education, Lr.Rc.No.93/C2- 1/83, dt.8-9-1983.
4. From the Secretary, A.P. Public Service Commission, Lr.NIo.920/R4/4/84, dt.2-3-84.

ORDER:-

As a result of re-grouping of pay scales of Teachers in the G.O. 2nd read above, the Commissioner for School Education was requested among other things, to submit proposals separately on the promotion channels available in all types of teachers grouped under category-III in the annexure to the G.O. 2nd read above for approval of Govt. The Commissioner for School Education has accordingly sent proposals for the changing the structure of service rules of different categories of teachers to be made applicable uniformly in the case of all managements. The proposals, submitted by the Commissioner for School Education have been examined and it has been decided that the method of recruitment and qualifications for the posts shown in categories 1 and 2 in the annexure-2 to the G.O. 2nd cited shall be as indicated in the annexure to this order.

2. orders regarding the scales applicable to the teachers under the automatic advancement scheme will issue from Finance & Planning Department separately.

3. This order issues with the concurrence of Finance & Planning Department vide their U.O. No.8010-A/643/PRC-1/84, dt.9-3-1984.

(By order and in the name of the Governor of Andhra Pradesh)

V.P. RAMA RAO
Principal Secretary to Govt.

ANNEXURE

Class	Category	Name of the post	Scale of pay	Method of recruitment	Qualification
	1.	Head-masters	Rs.900 – 1,500	By promotion in the following order of preference from any of the qualified persons in the categories of 1. School Asst. Gr.I 2. School Astt. Gr.II (Special and ordinary categories) 3. Post-Graduate Asst. (Upgraded School Asst.) 4. Language Pandits Gr.I (Special and ordinary Category) 5. Regional Inspector of Physical Edn. & Phy. Director Grade.I 6. Phy. Director Gr.II	1. An academic degree + B.Ed. 2. H.M. Accounts test in respect of all managements except the Govt. Schools and P. Raj schools before provincialisation of service OR Dy. Inspector Test in Full or Accounts test for subordinate officers Part-1.
	2.A	1) School Asst. Grade I 2) School Asst. Gr.II (Spl. & Ordinary) 3) Post Graduate Asst. (Spl. Upgraded School Assts.) 4) Language Pandits Gr.I (Special & Ordinary Cat.)	Rs.700 – 30 - 1060 - 35 – 1200	1. Direct recruitment 2. By promotion in the following order of preference from the categories given below: a) Jr.Dy. Inspectors of Schools b) Gr.II & III Language Pandits c) S.G.B.T. teachers (Spl. & Ordinary Cat.) d) Higher Grade teachers e) Lower Gr.	A Degree of B.A. or B.Sc. of a University and a Teaching Degree of any University in India established or incorporated by or under a Central Act, State Act or by any institution recognised by the University Grants Commission for appointment to the Categories of School Asst. Gr.II (including the P.G. Asst.) and for Language Pandit Gr.I (Spl. Or Ordinary Cat) a degree or an oriental title in the language concerned

				Teachers f) Craft Instructors Gr.I and Gr.II g) Drawing teachers Gr.I & Gr.II h) Art teachers Gr.I & Gr.II i) Manual Training Instructors Gr.I & Gr.II j) Manual Training Inistructors in Weaving k) Sewing Instructors l) Drawing & Sewing Instructors m) Textile Printing Instructors n) Tailoring Instructors o) Phy. Training Instructors Gr.I p) Phy. Training Instructors Gr.II 3. Recruitment by transfer from any other service.	with a Pandits training or a teaching degree or any other equivalent degree.

	2.B	a) Regional Inspector of Phy. Edn. and Phy. Director Gr.I b) Phy. Director Gr.II (Spl. & Ordinary)	Rs.700 – 30 - 1060 - 35 – 1200 Rs.700 – 30 - 1060 - 35 – 1200	1. Direct recruitment 2. By promotion in the following order of preference from the categories given below: a) Physical Training Instructors Gr.I. b) Phy.Trg. Inst. Gr.II	A n academic degree and a degree or diploma in Phy. Edn. of a Recognised University or any other qualification equivalent threto.

A reading of the above reproduced G.O. makes it clear that the post of School Assistant Grade-I, School Assistant Grade-II (Special and Ordinary Category), Post-Graduate Assistant (Special and Upgraded School Assistants) and Language Pandit Grade-I (Special and Ordinary Category) could be filled by three methods i.e. direct recruitment, promotion and transfer. Although the rules and the policy framed by the government do not contain any indication about the ratio in which appointment is to be made from different sources, but this much is clear that the channel of promotion is open only for the persons holding the posts specified in column 4 of the Annexure. The appellant was not holding either of those posts. Therefore, he was not eligible to be considered for promotion to the post of School Assistant Grade-I etc. (though no material has been placed on record to show that the post of B.Ed. Assistant is equivalent to School Assistant Grade-I and other posts specified in column 2 of the Annexure appended to G.O.Ms.No.167, dated 9-3-1984, learned counsel for the parties agreed that the pay scale of the two posts are identical and they are being filled by the same methodology).

The appellant's claim for recruitment by transfer is liable to be negatived on the short ground that he was holding the post in the same service whereas appointment by transfer is permissible only from among the persons holding post in any other service.

Rule 15 of the Rules on which reliance has been placed by the learned counsel for the appellant reads as under:

15. Procedure for appointment of staff and disciplinary control:-

1) a) The appointment of teaching and non-teaching staff in all the Schools functioning under all categories of managements namely the Government, Local Bodies as well as the private categories of managements shall be by way of recruitment through the authorised recruiting agency like the Teachers' Service Commission etc., when constituted and by following such procedure as may be prescribed by the Government from time to time;

b) Pending entrusting of the function of recruitment to any authorised recruiting agency like Teachers' Service Commission etc., and framing of specific rules for the purpose, the appointments to the teaching and non-teaching posts in the schools functioning under private management (non-minority) shall be made with the candidates selected by the Staff Selection Committee constituted for the purpose;

c) … … …

d) … … …

2) The candidates sponsored by the concerned Employment Exchange alone shall be entertained for interview for selection by the Staff Selection Committee. In case the Employment Exchange is unable to sponsor suitable candidates for appointment, the educational agency may make advertisements in the local daily news papers having wide circulation calling for applications from the candidates possessing requisite qualifications for appointment to various posts after subjecting them to interview and selection by the Staff Selection Committee.

3) a) The Staff Selection Committee for the private schools shall consist of the following personnel as members –

i) Representative of the educational agency.

ii) Head-Master/Principal of the Institution.

iii) A subject expert preferably above the rank of the posts for which selection has to be made, from the nearest Government or recognised private institution (in case of teaching posts), and officer not below the rank of Superintendent of the nearest Government Educational Institution or of the local body concerned (in case of non-teaching posts).

iv) Two representatives of the education department (D.E.O.) one from the academic side (subject expert) and the other from the administration side.

b) In case of selection of candidate for the post of Head-Master/Principal of the Institution, the member referred to in item (ii) above,

shall be the Head-Master/Principal of the nearest Government Institution;

c) In case of pre-primary and primary schools, it is open for the management to include any of the staff members working in the nearest Government local body schools of at least equal rank to the post to be filled in, as departmental representatives against item (iv) under clause (a), in the Staff Selection Committee and in any case the Committee will consists of at least five members, including the subject expert;

d) The quorum for the Staff Selection Committee shall not be complete unless the four of the five members, including one of the members in item (iii) or (iv) of clause (a) are present. The candidates as approved by the majority members shall be deemed to have been selected by the Staff Selection Committee;

e) In the event of none of the departmental representatives mentioned under item (iv) not being able to present on the date of interview despite issue of ten days advance notice, the meeting of the Staff Selection Committee shall be postponed in the first instance, duly communicating the same to the Departmental representatives and also indicating the date of next interview meeting. If the Departmental representatives fail to turn up for the second time also, the Secretary/Correspondent/Manager may convene the meeting of the Staff Selection Committee and the selection made, shall be treated as selection of candidates in the presence of Departmental representatives provided however that the subject expert is from the Government Institution and the candidates are qualified to be appointed;

f) The Secretary/Correspondent/Manager of the Institution shall issue orders of appointment to the selected candidates within a period of one month from the date of conducting of interview by the Selection Committee.

4) a) The Competent Authority shall not take more than three months from the date of receipt of the proposals, for the approval of the appointments made by the managements, failure of which the appointments made shall be treated as ratified, except when the candidates are otherwise ineligible for the appointment;

b) i) the Competent Authority for approval of appointments made in respect of Hindi Patasals, Hindi Vidyalayas and Oriental Schools, shall be Director of School Education;

ii) The competent authority for approval of appointments made in respect of Secondary Schools (High Schools) shall be the Regional Joint Director of School Education concerned;

iii) The competent authority for the approval of the appointment made in respect of Pre-primary, Primary and Upper-Primary Schools, shall be the District Educational Officer concerned;

5) The Staff Selection Committee shall keep in view the following criteria for selection of teaching staff for the schools functioning under private managements --

a) Women candidates shall be appointed for the teaching and non-teaching posts in the Women's Institutions. However, if women candidates are not available to fill up the vacancies, men can be appointed on temporary

basis with the prior permission of the competent authority;

b) Candidates appointed shall possess the general and professional qualifications (in teaching) as required for the post. Any such appointments are eligible for approval by the competent authority;

c) In case of non-minority educational institutions the rule of reservation for making appointments, as prescribed by the Government from time to time shall be followed.

6) The educational agency (minority or non-minority) shall send the list of candidates selected by the Staff Selection Committee to the competent authority for approval of appointments, in the prescribed form (Form IV) within one month from the date of conducting the interview by the Staff Selection Committee. Private Schools qualify for the grant-in-aid, if any, by the Government, only when the appointments made are approved by the Competent Authority and/or to only those posts which are held by the qualified approved candidates.

b) The appointments of teaching and non-teaching staff when made with the candidates recruited by the authorised recruiting agency like Teachers' Service Commission (but not the Staff Selection Committee) do not require approval by the competent authority.

7) a) The educational agencies of the existing schools shall send the list of qualified candidates whom they have appointed to the competent authority in the prescribed form (Form IV) within a period of three months from the date of issue of those rules, for approval of appointments, if not already got approved;

b) In case any of the educational agencies fail to get the appointments already made approved by the competent authority within the stipulated period, all such posts (held by qualified or unqualified candidates) shall be treated as vacant and the educational agency shall take action for filling up the post, by following the procedure prescribed under sub-rule (2).

8) … … …

9) … … …

In our opinion, the above reproduced provision cannot be relied upon for declaring the appellant eligible to be appointed as B.Ed. Assistant by promotion because that he was not holding any of the posts specified in the feeder category or for appointment by transfer. In any case,

Rule 15 is not available to the appellant because he has neither pleaded nor any evidence has been produced before the Court that the State Government had constituted Teachers' Service Commission or the management had constituted Staff Selection Committee and any recommendation was made by either of the agencies.

No other point has been argued.

In the result, the appeal is dismissed.

G.S. SINGHVI, C.J.

September 11, 2007

C.V. NAGARJUNA REDDY, J.

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